



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
RESEARCH DEVELOPMENT AND ACQUISITION
103 ARMY PENTAGON
WASHINGTON DC 20310-0103



REPLY TO
ATTENTION OF

12 DEC 1994

SARD-PP

MEMORANDUM FOR COMMANDER, U.S. ARMY CORPS OF ENGINEERS,
ATTN: CECG, 20 MASSACHUSETTS AVENUE,
N.W., WASHINGTON, D.C. 20314-1000

SUBJECT: Authority to Perform Research and Development
Using Grants and Cooperative Agreements Under
10 U.S.C. 2358

References:

1. 10 U.S.C. 2358
2. 10 U.S.C. 2371
3. Chapter 63, 31 U.S.C.
4. DoD 3210.6-R, DoD Grant and Agreement Regulations
5. Secretary of Army Delegation of Authority 94-001
dated September 29, 1994 (Enclosure 2)

You are hereby authorized to enter into grants and cooperative agreements to carry out various research and development projects under the authority of 10 U.S.C. 2358, as implemented by the DoD Grant and Agreement Regulations (DoD 3210.6-R) and other Interim Guidance published by the Director, Defense Research and Engineering (Enclosure 3), *subject to accomplishment of the actions listed at Enclosure 1.* Because underlying statutes have been changed, AR 70-5 was cancelled by the Secretary of the Army. Army implementation of DoD 3210.6-R will be published after that regulation is formally issued.

I expect the Corps' management team to be personally involved in overseeing the initial efforts under this authority. As is the case with procurement/acquisition, assistance (grants, cooperative agreements and other non-procurement instruments) is very much a team activity. For the Army, only contracting officers are authorized to become grants officers. Waivers may be granted in special circumstances.

This authority may be redelegated to chiefs of subordinate USACE contracting offices; however the



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SECRETARY OF THE ARMY
WASHINGTON

September 29, 1994

DELEGATION OF AUTHORITY



DOA 94-001

SUBJECT: Delegation of Authority in 10 U.S.C. §2358 and 10 U.S.C. §2371 from the Secretary of the Army to the Assistant Secretary of the Army (Research, Development and Acquisition)

The power and authority of the Secretary of the Army contained in the statutes identified below is hereby delegated to the Assistant Secretary of the Army (Research, Development and Acquisition (ASA(RDA))), to the following extent:

Pursuant to 10 U.S.C. §2358:

- The ASA(RDA) may engage in research and development projects that are necessary to the responsibilities of the Department of the Army in the field of research and development. These projects must either relate to weapon systems and other military needs or be of potential interest to the Department of Defense.
- The ASA(RDA) may perform such research and development projects: by contract, cooperative agreement, or grant awarded in accordance with chapter 63 of Title 31; through one or more of the military departments; by using employees and consultants of the Department of Defense; or by mutual agreement with the head of any other department or agency of the Federal Government.

Pursuant to 10 U.S.C. §2371:

- The ASA(RDA) may enter into transactions (other than contracts, cooperative agreements, and grants) in carrying out research projects.
- The ASA(RDA) may include a clause that requires payment to be made to the Army or any other department or agency of the Federal Government as a condition for receiving support under a cooperative agreement or "other transaction" for a research project. When such a clause is used, any amount received shall be merged, to the extent authorized by the Secretary of Defense, with other funds in the special Treasury account for the Army and shall be available for the same purposes and the same period for which other funds in the account are available.

The aforesaid delegation is subject to the following terms and conditions:

- All power and authority not specifically delegated to the ASA(RDA) herein shall remain with the Secretary of the Army unless delegated elsewhere.
- All proposed grants or cooperative agreements to be entered into under the authority in 10 U.S.C. §2358, with a value in excess of \$2 million for one year or \$5 million for all years, must be approved by the ASA(RDA) or his designee prior to award. (This approval responsibility cannot be delegated any lower than the Deputy Assistant Secretary level).
- The following statutory restrictions apply to the use of the authority in 10 U.S.C. §2371:
 - • Research performed under such authority must not be duplicative.
 - • To the extent practicable, funds expended by the Army cannot exceed the total amount of funds provided by the recipient in connection with any single project.
 - • Cooperative agreements and "other transactions" under this authority may only be used when a standard contract, grant, or cooperative agreement is not feasible.
- The authority to enter into "other transactions" and cooperative agreements pursuant to 10 U.S.C. §2371, may only be delegated when the ASA(RDA) has received a written request for such delegation that explains the need for such authority, and the ASA(RDA) makes a written determination that such delegation is justified. Even if such authority is delegated, the ASA(RDA) must review, approve, or disapprove any specific "other transaction" or cooperative agreement pursuant to 10 U.S.C. §2371, regardless of dollar value, prior to the entry of any binding agreement. (This approval authority may not be redelegated).
- The ASA(RDA) must ensure that an annual report on all "other transactions" or cooperative agreements pursuant to 10 U.S.C. §2371 is prepared for the Army and submitted as required through the Office of the Secretary of Defense to Congress. The ASA(RDA) will provide such report to the Secretary of the Army as requested.

This delegation shall be effective immediately and will expire on September 30, 1996. All prior delegations of this authority are hereby rescinded without prejudice to actions taken thereunder.

A handwritten signature in black ink, appearing to read "Togo D. West, Jr.", with a long, sweeping horizontal line extending to the left.

Togo D. West, Jr.

DELEGATION OF AUTHORITY TO PERFORM
RESEARCH AND DEVELOPMENT USING GRANTS AND COOPERATIVE
AGREEMENTS

HCA REQUIREMENTS FOR EXERCISING AUTHORITY

HCA's shall:

1. Establish a dedicated, trained staff element in each subordinate contracting office to be authorized to prepare, execute and administer assistance arrangements.
2. Ensure that all contracting officers to be further warranted as grants officers, and others in support of the assistance staff, including Counsel, receive appropriate training on assistance execution and management. The mandatory DoD/DAU course "Award and Management of Grants and Cooperative Agreements" (GRT 101) formally begins in January 1995 (2nd Pilot Class was mid-October; FY95 class schedule attached). Other courses on Grants Management are available from commercial firms, and other Government agencies such as Department of Agriculture and NIH; however, grants officers attending such training must still attend the DoD course.
3. Ensure that knowledgeable legal and policy support regarding assistance transactions is available to the Corps assistance staff elements, senior managers and technical and project/program managers. To this end, ensure that all related laws, pertinent Code of Federal Regulations (CFR) references, especially OMB Circulars implementing the Federal Grant and Cooperative Agreement Act and setting forth non-commercial cost principles, are made available to personnel with assistance responsibility.
4. Ensure documentation of each file with the legal authority for the action and the basis for the determination to use a non-procurement instrument. The documentation must fully address all conditions of the statutory and regulatory authority (e.g., chapter 63 of title 31, U.S. Code; and relevance of potential interest to the Department of Defense under 10 U.S.C. 2358). The file should reflect evidence of legal sufficiency review of both the instrument and the file documents.
5. Ensure compliance with the requirements of all pertinent OMB Circulars, DoD Directives, Instructions and Regulations, particularly the Memorandum from the Director of Defense Research and Engineering (DDRE) dated February 8, 1994, Subject: Grants, Cooperative Agreements, and Other Transactions", the DoD Grant and Agreement Regulations (DoDGARs), and any future Army implementation thereof.
6. Submit each proposed grant or cooperative agreement, together with the documentation discussed above, for planned research or development actions under the authority of 10 U.S.C. 2358, with a value in excess of \$2 million for one year or \$5 million for all years, for prior review and approval by HQDA. Those grants or cooperative

agreements requiring such approval shall be forwarded through HQ USACE to SARD-TR.

7. Ensure that all required reporting of both planned assistance (grants and cooperative agreements) and actual obligations for such assistance is accomplished in a timely and accurate manner. This information is to be provided to the Army Procurement Research and Analysis Office, SFRD-KPR, Fort Lee, VA, for consolidation and forwarding to the DoD Directorate for Information Operations and Reports (DIOR), Washington Headquarters Services. (Contact Gene Beeckler at APRAO, DSN 539-4776).

Attachment

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SECRETARY OF THE ARMY
WASHINGTON



September 29, 1994

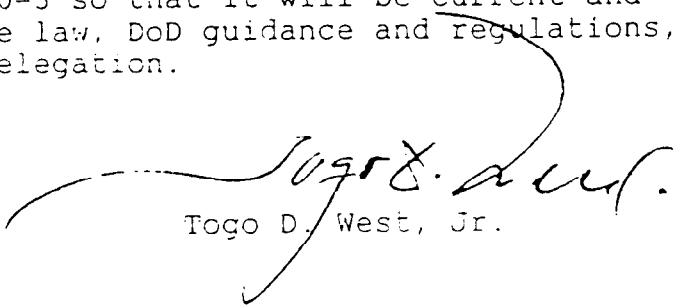
MEMORANDUM FOR ASSISTANT SECRETARY OF THE ARMY
(RESEARCH, DEVELOPMENT AND ACQUISITION)

SUBJECT: Delegation of Authority in 10 U.S.C. §2358
and 10 U.S.C. §2371

Attached is a delegation of the subject authority. It allows you to empower responsible Army contracting activities to engage in research and development projects related to Army interests by contract, grant, and cooperative agreement. The delegation also permits the authority to enter into "other transactions" for research projects to be redelegated under limited circumstances, on a case-by-case basis. I appreciate the history of this authority and understand the need to use these instruments to ensure the Army's progress in research and development, as well as to protect our resilient research relationship with universities, non-profits, and industry. I recognize, as well, the potential visibility of high dollar grants and cooperative agreements, particularly those concerning novel research, and the delicate and uncharted nature of other transactions.

Consequently, I have placed conditions and limits on the exercise and redelegation of this authority. The delegation expires on September 30, 1996. I have required that you have an annual report generated concerning certain instruments. Further, I expect you to brief me quarterly on any significant activity.

This delegation may be construed as inconsistent with AR 70-5. In view of the fact that the Public Law upon which AR 70-5 is based has been repealed and superseded by statutes and regulations that are consistent with this delegation, AR 70-5 is hereby rescinded. The DDR&E is in the process of finalizing the DoD Grant and Agreements Regulations (DoD 3210.6-R) which were issued as an interim-guidance draft February 8, 1994. You must follow the direction in that interim-guidance as best as practicable, and you should ensure the redrafting of AR 70-5 so that it will be current and consistent with the law, DoD guidance and regulations, and the attached delegation.


Togo D. West, Jr.

Attachment

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Attachment 1 -- INTERIM GUIDANCE FOR MILITARY DEPARTMENTS AND ADVANCED
RESEARCH PROJECTS AGENCY ON GRANTS, COOPERATIVE AGREEMENTS AND
"OTHER TRANSACTIONS"

SECTION I -- GENERAL

A. PURPOSE AND APPLICABILITY

1. This document, together with the "Interim-Guidance Draft of 3210.6-R, DoD Grant and Agreement Regulations" (Interim-Guidance Draft DoDGARs), provides interim guidance for:

a. "Other transactions" (other than grants, cooperative agreements, and contracts), which are instruments that:

(i) May be used for basic, applied, and advanced research projects under 10 U.S.C. §2358, or for other purposes consistent with Subsection C.1. of this section.

(ii) May use the funds-merger authority in 10 U.S.C. §2371(a).

(iii) Shall comply, except as provided in Subsection C.2. of this section, with the requirements of subsections (c) and (e) of 10 U.S.C. §2371, whether or not they utilize the funds-merger authority in 10 U.S.C. §2371(a).

b. A class of cooperative agreements (hereafter referred to as "cooperative agreements under 10 U.S.C. §2371") that:

(i) May be used for performing basic, applied, and advanced research projects under 10 U.S.C. §2358.

(ii) Shall be subject to the same provisions of 10 U.S.C. §2371 as "other transactions," [see subparagraphs (ii) and (iii) of paragraph A.1.a. of this section, above].

(iii) Are covered by provisions in Part 37 of the Interim-Guidance Draft DoDGARs that differ from provisions in other parts of the DoDGARs for all other cooperative agreements.

c. All other cooperative agreements (i.e., those that are not "cooperative agreements under 10 U.S.C. §2371"), including those for purposes other than research and development.

d. Grants for any purpose.

2. This guidance applies to the Military Departments and Advanced Research Projects Agency (hereafter referred to collectively as "awarding agencies"), the DoD Components authorized to use "other transactions" and "cooperative agreements under 10 U.S.C. §2371."

3. This document is in three sections:

a. This section, Section I, establishes policy and assigns authorities and responsibilities for "other transactions"

and for "cooperative agreements under 10 U.S.C. §2371."

b. Section II, which is based on the Interim-Guidance Draft DoDGARS, provides additional guidance for grants and for all cooperative agreements, including "cooperative agreements under 10 U.S.C. §2371."

c. Section III provides additional guidance specifically for "other transactions."

B. DEFINITIONS

1. Advanced Research. For the purpose of 10 U.S.C. §2358, advanced research is advanced technology development that creates new technology or demonstrates the viability of applying existing technology to new products and processes in a general way. Advanced research is most closely analogous to precompetitive technology development in the commercial sector. It does not include development of military systems and hardware where specific requirements have been defined. It is typically funded in Budget Activity 2 ("6.3A" Advanced Technology Development), within Research, Development, Test and Evaluation (RDT&E).

2. Applied Research. Efforts, typically funded within the 6.2 Exploratory Development category of RDT&E, to determine and exploit the potential of science and engineering knowledge and understanding in technology such as new materials, devices, methods, and processes (also see definition at Subpart 36.2 of the Interim-Guidance Draft DoDGARS).

3. Basic Research. Efforts, typically funded in RDT&E's 6.1 Research category, intended to increase knowledge and understanding in science and engineering (also see definition at Subpart 36.2 of the Interim-Guidance Draft DoDGARS).

4. Cooperative Agreement. A legal instrument used to enter into the same kind of relationship as a grant (see definition in 6., below), except that substantial involvement is expected between the Department of Defense and the recipient when carrying out the activity contemplated by the cooperative agreement. The term does not include "cooperative research and development agreements" as defined in 15 U.S.C. §3710a.

5. Development. Efforts (typically those funded in RDT&E categories other than 6.1 Research, 6.2 Exploratory Development, and "6.3A" Advanced Technology Development) to systematically use scientific and technical knowledge to design, develop, test, or evaluate potential new products, processes, or services to meet specific performance requirements or objectives (also see definition at Subpart 36.2 of Interim-Guidance Draft DoDGARS).

6. Grant. A legal instrument used to enter into a relationship, the principal purpose of which is to transfer a thing of value to the recipient to carry out a public purpose of support or stimulation authorized by a law of the United States,

rather than to acquire property or services for the Department of Defense's direct benefit or use. Further, it is a relationship in which substantial involvement is not expected between the Department of Defense and the recipient when carrying out the activity contemplated by the grant.

7. "Other transaction." A legal instrument authorized by 10 U.S.C. §2358 for performing research and development projects. In accordance with this interim guidance, "other transactions" are used almost exclusively for performing basic, applied, and advanced research, when it is not appropriate or feasible to use a procurement contract, grant, or cooperative agreement.

C. POLICY

1. "Other transactions" that are authorized by 10 U.S.C. §2358 for the performance of research and development projects and "cooperative agreements under 10 U.S.C. §2371" are appropriately used to perform basic research, applied research, and advanced research projects in accordance with this interim guidance. "Other transactions" may be used for other purposes only as authorized by laws other than 10 U.S.C. §2358 [e.g., section 845 of the National Defense Authorization Act for Fiscal Year 1994 (P.L. 103-160) and any DoD implementation thereof].

2. Awarding agencies shall comply with provisions of 10 U.S.C. §2371 with respect to all "other transactions" authorized by 10 U.S.C. §2358, except where subsection 845(b) of P.L. 103-160 specifically provides otherwise.

D. AUTHORITY FOR COOPERATIVE AGREEMENTS AND "OTHER TRANSACTIONS"

The Director, Advanced Research Projects Agency and the Secretaries of the Military Departments shall perform research and development projects by cooperative agreement or "other transaction" authorized by 10 U.S.C. §2358 in accordance with DoD Directive 3210.6, this interim guidance, and applicable portions of other DoD publications. The Director, Advanced Research Projects Agency, shall exercise the authority of the Secretary of Defense under 10 U.S.C. §2358 to perform research and development through such agreements and transactions, and the Secretaries of the Military Departments shall exercise their direct authorities under 10 U.S.C. §2358 to do so. Such authorities may be delegated in accordance with the Interim-Guidance Draft DoDGARs, without further restriction. However, approval levels for "other transactions" should be commensurate with the uncertain nature of the instruments (see B.3. in Section III of this document).

E. PROCEDURES FOR "OTHER TRANSACTIONS" AND "COOPERATIVE AGREEMENTS UNDER 10 U.S.C. §2371"

1. In carrying out basic research, applied research, and advanced research projects, the Secretaries of the Military

Departments, and the Director, Advanced Research Projects Agency:

a. May enter into "other transactions" or "cooperative agreements under 10 U.S.C. §2371" that require the recipient, as a condition for receiving support under the agreement or transaction, to make payments to the Department of Defense or other Federal Agency. Such payments may be credited to the account established on the books of the U.S. Treasury Department by 10 U.S.C. §2371(d). Amounts credited are available for the same period for which other funds in such accounts are available and for the same purpose [i.e., support of research projects provided for in "other transactions" and "cooperative agreements under 10 U.S.C. §2371"]. The research projects that are supported shall be consistent with applicable, programmatic guidance from the Director, Defense Research and Engineering.

b. May determine that it is impracticable to ensure that funds provided by the Government under an "other transaction" or "cooperative agreement under 10 U.S.C. §2371" do not exceed the total amount provided by the other parties to the agreement or transaction, in accordance with 10 U.S.C. §2371(c)(2).

c. Shall ensure that "cooperative agreements under 10 U.S.C. §2371" or "other transactions," to the maximum extent practicable, do not provide for research that duplicates research being conducted under existing programs carried out by the Department of Defense, in accordance with 10 U.S.C. §2371(c)(1).

d. Shall ensure that "cooperative agreements under 10 U.S.C. §2371" are used only when it is not feasible or appropriate to use standard contracts or grants, in accordance with 10 U.S.C. §2371(c)(3).

e. Shall ensure that "other transactions" are used only when it is not feasible or appropriate to use standard contracts, grants, or cooperative agreements.

2. Each Military Department and the Advanced Research Projects Agency shall identify an office that will be responsible for reporting to the Defense Technical Information Center (DTIC) on all "other transactions" and "cooperative agreements under 10 U.S.C. §2371" entered into by that awarding agency. DTIC will compile the information in the Work Unit Information Summary Database, which is assigned report control symbol DD-A&T(A)1936, for use in preparing reports to Congress that are required by 10 U.S.C. §2371(e). Awarding agencies' reports shall:

a. Contain data requested by DTIC about each "cooperative agreement under 10 U.S.C. §2371" and "other transaction" [as a minimum, the information required by 10 U.S.C. §2371(e)].

b. Be provided to DTIC-OCP, Cameron Station, Alexandria, VA 22304-6145, in the format DTIC specifies and in accordance with a schedule DTIC establishes, to meet deadlines set by 10 U.S.C. 2371(e) for the annual reports to Congress.

SECTION II -- GRANTS AND COOPERATIVE AGREEMENTSA. PURPOSE

This section provides guidance for grants and for all cooperative agreements, including those under 10 U.S.C. §2371.

B. GUIDANCE

Awarding agencies shall use the Interim-Guidance Draft DoDGARS when awarding and administering grants and cooperative agreements. Specifically, awarding agencies shall comply with:

1. Those parts of the DoDGARS that currently are in the Code of Federal Regulations (CFR). They are Governmentwide:

a. Requirements for nonprocurement debarment and suspension and for drug-free workplace, at 32 CFR Part 25. Currently, compliance with this Part is also directed by DoD Instruction 3210.5, which will be cancelled when DoD 3210.6-R takes effect.

b. Restrictions on lobbying, at 32 CFR Part 28.

c. Requirements for administering grants and agreements with State and local governments, at 32 CFR Part 33.

2. Statutory or regulatory requirements for DoD grants and cooperative agreements, several of which are implemented in the Interim-Guidance Draft DoDGARS. Those requirements include:

a. The Grant and Cooperative Agreement Act (31 U.S.C. Chapter 63), implemented in section §21.10 of the draft DoDGARS.

b. 31 U.S.C. Chapter 61, which requires reporting of program information and awards data, as provided for in Subpart D of Part 21 of the draft DoDGARS.

3. To the maximum extent practicable, other portions of the attached, draft DoDGARS. The intent is to:

a. Provide a framework for the award and administration of grants and cooperative agreements; and

b. Test the draft rules before they are formally proposed, to see which provisions may cause difficulties in practice and what additional provisions might be needed. To that end, awarding agencies may waive or apply flexibly provisions that cause problems, to the extent that such waiver or flexible application does not result in noncompliance with a statute or binding regulatory requirement. Agencies will report waivers or use of modified provisions, identify the problems that led to such waivers or modifications, and suggest solutions, through appropriate channels, to: ODDR&E(RLM); Room 3E-1049; Pentagon; Washington, D.C. 20301-3080.

SECTION III -- "OTHER TRANSACTIONS" UNDER 10 U.S.C. §2371A. PURPOSE

This section supplements Section I of this document, by providing additional guidance specific to "other transactions."

B. GUIDANCE

1. In paragraph B.7. of Section I of this interim guidance, the term "other transaction" is defined by what it is not: a grant, cooperative agreement, or procurement contract. There is considerable uncertainty as to what precise form an "other transaction" might take. Therefore, awarding agencies should consider the authority to enter into "other transactions" as an opportunity to develop innovative approaches to carrying out basic, applied, or advanced research projects (or other programs where use of "other transactions" is consistent with Subsection I.C. of this interim guidance).

2. As awarding agencies gain experience with "other transactions," classes of these instruments may emerge that can be defined clearly. Awarding agencies shall identify such classes, as they are developed, to the Director, Defense Research and Engineering. To the extent that those classes of instruments can be standardized, it will facilitate using them more widely and on a routine basis.

3. Awarding agencies shall establish approval levels for "other transactions" that are commensurate with the uncertain nature of the instruments. Authority to approve "other transactions" should be delegated to officials whose level of responsibility, business acumen, and judgment enable them to operate in a relatively unstructured environment. Appropriate approval levels for "other transactions" therefore may be higher than those for cooperative agreements, which are reasonably well-defined instruments with an established framework for award and administration. This guidance applies only to "other transactions" under 10 U.S.C. §2358 and is not intended to require higher levels of approval for agreements under other statutory authorities.

4. Because the nature of "other transactions" is uncertain, approving officials will consult legal counsel to ensure that proposed instruments:

a. Are "other transactions" authorized by 10 U.S.C. §2358.

b. Conform with applicable legal requirements (e.g., particular "other transactions," depending upon their nature, may be subject to laws or Governmentwide rules that apply broadly to financial assistance or nonprocurement instruments).



DIRECTOR OF DEFENSE RESEARCH AND ENGINEERING

WASHINGTON, DC 20301-3010

08 FEB 1994

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
ATTN: SERVICE ACQUISITION EXECUTIVES
DIRECTOR, ADVANCED RESEARCH PROJECTS AGENCY

SUBJECT: Grants, Cooperative Agreements, and Other Transactions

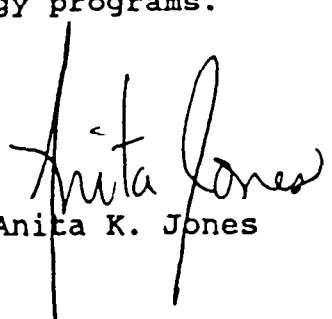
This memorandum provides interim guidance for use of grants, cooperative agreements, and "other transactions" (transactions other than grants, cooperative agreements, and procurement contracts). In doing so, it assigns certain responsibilities of the Secretary of Defense under 10 U.S.C. §2358 and §2371, as amended by section 827 of the National Defense Authorization Act for Fiscal Year 1994 (P.L. 103-160).

As amended, 10 U.S.C. §2358 authorizes the Secretary of Defense and Secretaries of the Military Departments to perform research and development projects by cooperative agreement or "other transaction," as well as by grant or contract. 10 U.S.C. §2371 provides additional authority that may be used in conjunction with cooperative agreements and "other transactions."

Use of grants, cooperative agreements, and "other transactions" should adhere to the interim guidance in the two attachments to this memorandum. Attachment 1 likely will become a DoD Instruction covering "other transactions" and 10 U.S.C. §2371. Attachment 2, the DoD Grant and Agreement Regulations, should be proposed for public comment this year.

Using the two attachments as interim guidance allows them to be tested in practice and refined before they are formalized. I will periodically update them, to incorporate lessons learned from their use. Therefore, I urge program and contracting offices to suggest ways to improve the guidance and to promptly bring to my attention any problems encountered in adhering to it.

I believe that grants, cooperative agreements, and "other transactions," if used appropriately, can be valuable tools to help meet program goals in the Technology Reinvestment Project and other Science and Technology programs.


Anita K. Jones

Attachments

5-163

ATTACHMENT 2

INTERIM-GUIDANCE DRAFT OF

DoD 3210.6-R

DoD GRANT AND AGREEMENT REGULATIONS

**INCORPORATING CHANGES AS OF
February 4, 1994**

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PART 21-DoD GRANTS AND AGREEMENTS--GENERAL MATTERS**Subpart A-Defense Grant and Agreement Regulatory System****§21.1 Authority and issuance.**

(a) DoD Directive 3210.6¹ established the Defense Grant and Agreement Regulatory System (DGARS). It also authorized publication of the DoD Grant and Agreement Regulations.

(b) On behalf of the Secretary of Defense, the Director, Defense Research and Engineering (DDR&E) develops and implements the policies and procedures of the DGARS. The DDR&E, or his or her designee, also issues the DoD Grant and Agreement Regulations, policy memoranda, and other DoD publications that comprise the DGARS.

§21.2 Purpose. The Defense Grant and Agreement Regulatory System was established to provide uniform policies and procedures for grants and cooperative agreements awarded by DoD Components. It is to be responsive to DoD needs for efficient program execution, effective program oversight, and proper stewardship of Federal funds.

§21.3 Applicability and relationship to acquisition regulations.

(a) Applicability to grants and cooperative agreements. The DoD Grant and Agreement Regulations (DoDGARS) apply to all DoD grants and cooperative agreements.

(b) Applicability to other nonprocurement instruments. Some portions of the DoDGARS apply to other nonprocurement instruments, in addition to grants and cooperative agreements. In such cases, the applicability is as stated in those portions of the DoDGARS. However, grants officers must exercise caution when determining the applicability of Governmentwide rules that have been included in the DoDGARS, because Governmentwide rules may define a term differently than the same term is defined elsewhere in the DoDGARS. For example, the Governmentwide implementation of the Drug-Free Workplace Act of 1988 (Subpart F of 32 CFR 25) states that it applies to grants, but defines "grants" to include cooperative agreements and other forms of financial assistance.

(c) Relationship to acquisition regulations. The Federal Acquisition Regulation (FAR), the Defense Federal Acquisition Regulation Supplement (DFARS), and DoD Component supplements to the FAR and DFARS apply to procurement contracts used to acquire

¹ Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. Authorized users may also obtain copies from the Defense Technical Information Center, Cameron Station, Alexandria, VA 22304-6145.

goods and services for the direct benefit or use of the Federal government. Policies and procedures in the FAR and DFARS do not apply to grants, cooperative agreements, and other nonprocurement transactions unless the DoDGARS specify that they apply.

§21.4 Compliance and implementation.

(a) The Heads of DoD Components are responsible for ensuring compliance with the DoD Grant and Agreement Regulations within their respective organizations.

(b) Heads of DoD Components may authorize the issuance of regulations that are consistent with and that implement or supplement the DoD Grant and Agreement Regulations to the extent that such regulations:

(1) Are necessary to:

(i) Implement DGARS policies and procedures within the DoD Component.

(ii) Supplement the DoD Grant and Agreement Regulations to satisfy needs that are specific to the DoD Component.

(2) Do not impose additional costs or administrative burdens on recipients or potential recipients.

§21.5 Publication and maintenance.

(a) The DoD Grant and Agreement Regulations are published as Chapter 1, Subchapter B of Title 32 of the Code of Federal Regulations (CFR) and in a separate loose-leaf edition. The loose-leaf edition is divided into parts, subparts, and sections, to parallel the CFR publication. Cross-references within the regulation are stated as CFR citations (e.g., a reference to Section 21.11 in Part 21 would be to 32 CFR 21.11).

(b) Updates to the DoD Grant and Agreement Regulations are published as Defense Grant and Agreement Circulars. Updates also are published in the Federal Register, with an opportunity for the public to submit written comments, when they have a significant:

(1) Cost or administrative impact on recipients or potential recipients; or

(2) Effect beyond internal DoD operating procedures.

(c) Revisions to the DoD Grant and Agreement Regulations are recommended to the Director, Defense Research and Engineering (DDR&E) by a standing working group. The DDR&E, Director of Defense Procurement, and each Military Department shall be represented on the working group. Other DoD Components that use

grants or cooperative agreements may also nominate representatives. The working group meets when necessary.

§21.6 Deviations.

(a) Definition. A "deviation" is the issuance or use of a policy or procedure that is inconsistent with the DoD Grant and Agreement Regulations.

(b) Individual deviations. Individual deviations affect only one grant or agreement. Except where prohibited by statute, executive order or regulation, the Head of the DoD Component or his or her designee may authorize individual deviations from the DoD Grants Regulations. A copy of the justification and agency approval shall be furnished to:

Deputy Director, Defense Research and Engineering
ATTN: Research and Laboratory Management
The Pentagon, Room 3E-1049
Washington D.C. 20301-3080

(c) Class deviations. Class deviations affect more than one grant or agreement. Class deviations must be approved in advance by the Director, Defense Research and Engineering (DDR&E) or his or her designee. Requests for such approval shall be submitted in writing to the DDR&E through the Deputy Director, Defense Research and Engineering at the address given in paragraph (b) of this section. Requests for approval shall contain a full description of the deviation desired, the circumstances in which it will be used, the rationale for requesting the deviation, and the period of time for which it is needed.

(d) Documentation. Copies of requests and approvals for individual and class deviations shall be maintained in award files.

§21.7 Definitions. The following are definitions of terms as used in this part or in other parts of the DoD Grant and Agreement Regulations that refer to this section:

(a) Acquisition. The acquiring (by purchase, lease, or barter) of property or services for the direct benefit or use of the United States Government (see more detailed definition at 48 CFR 2.101, in the "Federal Acquisition Regulation"). In accordance with 31 U.S.C. 6303, procurement contracts (see definition of "contract") are the appropriate legal instruments for acquiring such property or services.

(b) Assistance. In accordance with 31 U.S.C. 6101(3), the transfer of a thing of value to a recipient to carry out a public purpose of support or stimulation authorized by a law of the United States. Grants and cooperative agreements are examples of legal instruments used to provide assistance.

(c) Contract. A legal instrument which, consistent with 31 U.S.C. 6303, reflects a relationship between the Federal government and a State, a local government, or other person when the principal purpose of the instrument is to acquire property or services for the direct benefit or use of the Federal government. Also referred to as a "procurement contract." A more detailed definition of the term appears at 48 CFR 2.101 [in the "Federal Acquisition Regulation" (FAR)].

(d) Contracting activity. An activity to which the Head of a DoD Component has delegated broad authority regarding acquisition functions, pursuant to 48 CFR 1.601.

(e) Contracting officer. A person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. A more detailed definition of the term appears at 48 CFR 2.101.

(f) Cooperative agreement. A legal instrument as described in section 21.10(a) of this part. The term does not include "cooperative research and development agreements," as defined in 15 U.S.C. 3710a.

(g) DoD Components. The Office of the Secretary of Defense, the Military Departments, the Defense Agencies, and DoD Field Activities.

(h) Grant. A legal instrument as described in section 21.10(a) of this part.

(i) Grants officer. An official with the authority to enter into, administer, and/or terminate grants or cooperative agreements.

(j) Nonprocurement instrument. A legal instrument other than a procurement contract. Examples include instruments of financial assistance, such as grants or cooperative agreements, and those of technical assistance, which provides services in lieu of money.

(k) Recipient. The person (e.g., organization or other entity) to which a DoD Component awards a grant or with which a DoD Component enters into a cooperative agreement.

Subpart B-Appropriate Use of Grants and Cooperative Agreements.**§21.10 The Grant and Cooperative Agreement Act.**

(a) General. In accordance with 31 U.S.C. Chapter 63 (the Grant and Cooperative Agreement Act), DoD Components shall use grants and cooperative agreements as legal instruments reflecting assistance relationships between the United States Government and recipients.

(1) Grants may be used when substantial involvement is not expected between the Department of Defense and the recipient when carrying out the activity contemplated in the agreement. Additional guidance on what constitutes "substantial involvement" for research and development awards may be found at 32 CFR 36.4(b)(2)(ii). Grants officers may also refer to 43 FR 36860 (August 18, 1978) for supplementary interpretative guidelines published by the Office of Management and Budget for 31 U.S.C. Chapter 63.

(2) Cooperative agreements may be used when substantial involvement is expected between the Department of Defense and the recipient when carrying out the activity contemplated in the agreement. Under no circumstances are cooperative agreements to be used solely to obtain the stricter controls typical of a contract.

(b) Exemptions. Under 31 U.S.C. 6307, the Director of the Office of Management and Budget (OMB) is authorized to exempt an agency transaction or program from the requirements of 31 U.S.C. Chapter 63. DoD Components shall request such exemptions only in exceptional circumstances. The request shall specify for which individual transaction or program the exemption is sought; the reasons for requesting an exemption; the anticipated consequences if the exemption is not granted; and the implications for other transactions and programs if the exemption is granted. The procedures for requesting exemptions shall be:

(1) In cases where 31 U.S.C. Chapter 63 would require use of a contract and the DoD Component wishes an exemption from that requirement, the DoD Component shall submit a request for exemption through appropriate channels to the Director of Defense Procurement (DDP). The DDP, after coordination with the Director of Defense Research and Engineering (DDR&E), shall transmit the request to OMB or notify the DoD Component that the request has been disapproved.

(2) In other cases, the DoD Component shall submit a request for the exemption through appropriate channels to the DDR&E. The DDR&E shall transmit the request to OMB or notify the DoD Component that the request has been disapproved.

(3) Where an exemption is granted, documentation of the approval shall be maintained in the award file.

§21.11 Fee or profit. Payment of fee or profit is consistent with a relationship whose principal purpose is the acquisition of property or services for the direct benefit or use of the United States Government, rather than assistance. Procurement contracts are the appropriate instruments to reflect such relationships. Therefore, grants and cooperative agreements shall not:

(a) Provide for the payment of fee or profit to the recipient.

(b) Be used to carry out programs where fee or profit is necessary to achieving program objectives.

Subpart C--Authorities and Responsibilities**§21.20 DoD Components**

(a) Statutory authorities. DoD Components may award grants and enter into agreements under a number of statutory authorities, which fall into three categories:

(1) Authorities that statutes provide to the Secretary of Defense. These authorities generally are delegated by the Secretary of Defense to Heads of DoD Components, usually through DoD Directives, Instructions, or policy memoranda that are not part of the DoD Grant and Agreement Regulatory System. The statutory authorities in this category include:

(i) Authority under 10 U.S.C. 2391 to make grants or conclude cooperative agreements to assist State and local governments in planning and carrying out community adjustments and economic diversification required by changes in military installations or in DoD contracts or spending that may have a direct and significant adverse consequence on the affected community.

(ii) Authority under 10 U.S.C. 2413 to enter into cooperative agreements with entities that furnish procurement technical assistance to businesses.

(2) Authorities that statutes may provide directly to the Heads of DoD Components. These authorities need no delegation by the Secretary of Defense. For example, 10 U.S.C. 2358 authorizes the Secretaries of the Military Departments, in addition to the Secretary of Defense, to perform research and development projects through grants and cooperative agreements.

(3) Authorities that arise indirectly as the result of statute. For example, authority to use a grant or cooperative agreement may result from:

(i) A federal statute authorizing a program that is consistent with an assistance relationship (i.e., the support or stimulation of a public purpose, rather than the acquisition of a good or service for the direct benefit of the Department of Defense). In accordance with the program statute and 31 U.S.C. Chapter 63, such a program would appropriately be carried out through the use of grants or cooperative agreements.

(ii) Exemptions requested by the Department of Defense and granted by OMB under 31 U.S.C. 6307, as described in section 21.10(b) of this part.

(b) Vesting and delegation of Components' authority.

(1) The authority and responsibility for awarding

grants and entering into cooperative agreements is vested in the Head of each DoD Component that has such authority.

(2) The Head of each such DoD Component may delegate to the heads of contracting activities (HCAs) within that Component authority to award grants or enter into cooperative agreements, to appoint grants officers (see section 21.22 of this part), and to broadly manage the DoD Component's functions related to grants and agreements. An HCA is the same official (or officials) designated as the head of the contracting activity for procurement contracts, as defined at 48 CFR 2.101.

§21.21 Contracting activities. The HCA is responsible for the grants and cooperative agreements made by or assigned to that activity. Those responsibilities include:

(a) Reporting of data required by Subpart D of this part.

(b) Ensuring that the terms and conditions of the grants and agreements provide for compliance with applicable statutes, executive orders, and Federal regulations. A list of such requirements for research and development grants and agreements is published pursuant to 32 CFR 36.3.

§21.22 Grants officers.

(a) Authority. Grants officers are individuals authorized, pursuant to 21.20(b) and 21.22(c), to enter into, administer, or terminate grants and/or cooperative agreements. Only grants officers shall sign such legal instruments on behalf of the Department of Defense. Grants officers may bind the Government only to the extent of the authority delegated to them. Appointing authorities shall give grants officers clear, written instructions regarding the limits of their authority [see 21.22(c)(2)]. Information on the limits of grants officers' authority shall be readily available to the public and agency personnel.

(b) Responsibilities. Grants officers should be allowed wide latitude to exercise judgment in performing their responsibilities. Grants officers are responsible for:

(1) Ensuring that all necessary actions are performed to achieve:

(i) Effective use of grants and cooperative agreements in the execution of Department of Defense programs.

(ii) Proper stewardship of Federal funds.

(iii) Compliance with the terms and conditions of the grant or cooperative agreement.

(2) Ensuring that the recipients of grants and

coöperative agreements receive impartial, fair, and equitable treatment.

(3) Ensuring that sufficient funds are available for obligation.

(4) Requesting and considering the advice of specialists in audit, law, science and engineering, and other fields, as appropriate.

(c) Selection, appointment and termination of appointment of grants officers. Each DoD Component that awards grants or enters into cooperative agreements shall have a formal process whereby the Head of the DoD Component or his or her designees [see 21.20(b)] select and appoint grants officers and terminate their appointments. DoD Components are not required to maintain a selection process for grants officers separate from the selection process for contracting officers, and written statements of appointment or termination for grants officers may be integrated into the necessary documentation for contracting officers, as appropriate.

(1) Selection. In selecting grants officers, appointing officials shall consider the complexity and dollar value of the grants and agreements to be assigned and judge whether candidates possess the necessary experience, training, education, business acumen, judgement, and knowledge of contracts and assistance instruments to function effectively as grants officers.

(2) Appointment. Statements of appointment shall be in writing and shall clearly state the limits of grants officers' authority, other than limits contained in applicable laws or regulations.

(3) Termination. Written statements of termination are required, unless the written statement of appointment provides for automatic termination. No termination shall be retroactive.

Subpart D-Grants Information

§21.30 Purpose. This subpart prescribes policies and procedures for compiling and reporting data related to grants, cooperative agreements, and other nonprocurement instruments subject to information reporting requirements of 31 U.S.C. Chapter 61.

§21.31 Individual Grants Action Reporting System.

(a) Purposes of the system. Data from the Individual Grants Action Reporting System (IGARS) are used to provide:

(1) DoD inputs to meet statutory requirements for Federal Governmentwide reporting of data related to obligations of funds by grant, cooperative agreement, or other nonprocurement instrument.

(2) A basis for meeting Governmentwide requirements to report to the Federal Assistance Awards Data System maintained by the Department of Commerce and for preparing other recurring and special reports to the President, the Congress, the General Accounting Office, and the public.

(3) Information to support policy formulation and implementation and to meet management oversight requirements related to the use of grants, cooperative agreements, and other nonprocurement instruments.

(b) Responsibilities.

(1) The Deputy Director, Defense Research and Engineering (DDDR&E), or his or her designee, shall issue the manual described in paragraph (b)(2)(ii) of this section.

(2) The Directorate for Information Operations and Reports, Washington Headquarters Services (DIOR, WHS) shall, consistent with guidance issued by the DDDR&E:

(i) Process IGARS information on a quarterly basis and prepare recurring and special reports using such information.

(ii) Prepare, update, and disseminate "Department of Defense Individual Grants Action Reporting System," an instruction manual for reporting information to IGARS. The manual, which shall be issued by the DDDR&E, shall specify procedures, formats, and editing processes to be used by DoD Components, including magnetic tape layout and error correction schedules.

(3) The following offices shall serve as central points for collecting IGARS information from contracting activities within the DoD Components:

(i) For the Army: U.S. Army Contracting Support Agency; ATTN: SFRD-KS; 5109 Leesburg Pike, Suite 916; Falls Church, VA 22041-3201.

(ii) For the Navy: As directed by ONR.

(iii) For the Air Force: As directed by SAF/AQCP.

(iv) For the Office of the Secretary of Defense, Defense Agencies, and DoD Field Activities: Each Defense Agency shall identify a central point for collecting and reporting IGARS information to the DIOR, WHS, at the address given in paragraph 21.31(c)(2) of this section. DIOR, WHS shall serve as the central point for offices and activities within the Office of the Secretary of Defense and for DoD Field Activities.

(4) The office that serves, in accordance with paragraph (b)(3) of this section, as the central point for collecting IGARS information from contracting activities within each DoD Component shall:

(i) Establish internal procedures to ensure reporting by contracting activities that use grants, cooperative agreements or other nonprocurement instruments subject to 31 U.S.C. Chapter 61.

(ii) Collect information required by DD Form 2566, "Individual Grant Action Report," from those contracting activities, and report it to DIOR, WHS, in accordance with paragraph (d) of this section.

(iii) Submit to the DDDR&E any recommended changes to the IGARS or to the instruction manual described in paragraph (b)(2)(ii) of this section.

(c) Reporting procedures. The data required by the DD Form 2566 shall be:

(1) Collected for each individual grant, cooperative agreement, or other nonprocurement action that is subject to 31 U.S.C. Chapter 61 and involves the obligation or deobligation of Federal funds.

(2) Reported on a quarterly basis to DIOR, WHS by the offices that are designated pursuant to paragraph (b)(3) of this section. For the first three quarters of the Federal fiscal year, the data are due by close-of-business (COB) on the 15th day after the end of the quarter (i.e., first-quarter data are due by COB on January 15th, second-quarter data by COB April 15th, and third-quarter data by COB July 15th). Fourth-quarter data are due by COB October 25th, the 25th day after the end of the quarter. If any due date falls on a weekend or holiday, the data are due on the next regular workday. The mailing address for

DIOR, WHS is 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302.

(3) Reported on a computer tape, floppy diskette or by other means permitted by the instruction manual described in paragraph (b)(2)(ii) of this section. The data shall be reported in the format specified in the instruction manual.

(d) Report control symbol. DoD Components' reporting of IGARS data is used by DoD to satisfy Governmentwide requirements to report to the Federal Assistance Awards Data System, which is assigned Interagency Report Control Number 0252-DOC-QU.

§21.32 Catalog of Federal Domestic Assistance.

(a) Purpose and scope of the reporting requirement.

(1) Under the Federal Program Information Act (Pub. L. 95-220), as implemented through OMB Circular A-89² of August 17, 1984, the Department of Defense is required to provide certain information about its domestic assistance programs to OMB and the General Services Administration (GSA). GSA makes this information available to the public by publishing it in the Catalog of Federal Domestic Assistance (CFDA) and maintaining the Federal Assistance Programs Retrieval System, a computerized data base of the information.

(2) The CFDA covers all domestic assistance programs and activities, regardless of the number of awards made under the program, the total dollar value of assistance provided, or the duration. In addition to programs using grants and cooperative agreements, covered programs include those providing assistance in other forms, such as payments in lieu of taxes or indirect assistance resulting from Federal operations.

(b) Responsibilities.

(1) Each DoD Component that provides domestic financial assistance shall:

(i) Report to the Directorate for Information Operations and Reports, Washington Headquarters Services (DIOR, WHS) all new programs and changes as they occur, or as DIOR, WHS requests annual updates to existing CFDA information.

(ii) Identify to the DIOR, WHS a point-of-contact who will be responsible for reporting such program information and for responding to inquiries related to it.

² Contact the Office of Management and Budget, EOP Publications, 725 17th St. N.W., New Executive Office Building, Washington, D.C. 20503.

(2) The DIOR, WHS shall act as the Department of Defense's single office for collecting, compiling and reporting such program information to OMB and GSA.

§21.33 Uniform grants numbering system. DoD Components shall assign identifying numbers to all nonprocurement instruments subject to this subpart, including grants and cooperative agreements. The numbering system parallels the the procurement instrument identification (PII) numbering system specified in 48 CFR 204.70 (in the "Defense Federal Acquisition Regulation Supplement"), as follows:

(a) The first six alphanumeric characters of the assigned number shall be identical to those specified by 48 CFR 204.7003(a)(1) to identify the DoD Component and contracting activity.

(b) The seventh and eighth positions shall be the last two digits of the fiscal year in which the number is assigned to the grant, cooperative agreement, or special assistance agreement.

(c) The 9th position shall be a number: "1" for grants; "2" for cooperative agreements; and "3" for other nonprocurement instruments.

(d) The 10th through 13th positions shall be the serial number of the instrument. DoD Components and contracting activities need not follow any specific pattern in assigning these numbers and may create multiple series of letters and numbers to meet internal needs for distinguishing between various sets of awards.

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PART 22--DoD GRANTS AND AGREEMENTS--RECIPIENT QUALIFICATIONS

Subpart A-General

§22.1 General requirement.

(a) Policy. DoD Components shall award grants or enter into cooperative agreements only with qualified recipients. The grants officer's signing of a grant or cooperative agreement constitutes a judgment that the prospective recipient is qualified with respect to that grant or cooperative agreement.

(b) Standards. To be qualified, a potential recipient must:

(1) Be judged to have adequate financial and technical resources, given those that would be made available through the grant or cooperative agreement, to execute the program of activities envisioned under the grant or cooperative agreement.

(2) Have no known, recent record of lack of responsibility or serious deficiency in executing such programs of activities.

(3) Have no known, recent record indicating a lack of integrity or business ethics.

(4) Be otherwise qualified and eligible to receive a grant or cooperative agreement under applicable laws and regulations.

§22.2 Definitions. Other than the terms defined by the following paragraphs, terms used in this part are defined in 32 CFR 21.7.

(a) Administrative costs. Additional costs incurred in processing and handling a grant debt because it became delinquent.

(b) Administrative offset. Withholding money payable by the United States Government to, or held by the Government for, a recipient to satisfy a delinquent grant debt the recipient owes the Government.

(c) Delinquent debt. A debt that the debtor fails to pay by the date specified in the initial written notification from the agency owed the debt or in any other applicable agreement, unless other satisfactory payment arrangements have been made by that date. In accordance with OMB Circular A-129¹, grant debts, as defined in (d) of this section, are delinquent

¹ Contact the Office of Management and Budget, EOP Publications, 725 17th St. N.W., New Executive Office Building, Washington, D.C. 20503.